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Senate

(Legislative day of Monday, May 1, 1995)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Let us pray:

God is able to make all grace abound toward you, that you, always having all sufficiency in all things, may have an abundance for every good work.—II Corinthians 9:8.

Gracious Father, we claim this Biblical promise as we begin this new day. We thank You for Your amazing grace, Your unqualified love, and forgiveness that flows from Your heart into our hearts filling up our diminished reserves. We are energized by the realization that You have chosen to be our God and have chosen us to belong first and foremost to You. So we clarify our priorities and commit ourselves to seek first Your will and put that above all else. It is liberating to know that You will supply all we need, in all sufficiency, to discern and do what glorifies You. Grant us wisdom, Lord, for the decisions of this day.

We ask this not for our own personal success but for our beloved Nation. America deserves the very best from us today. Experience has taught us that You alone can empower us to be the leaders America needs. Fill us with a new passion for patriotism and fresh commitment for the responsibilities of leadership You have entrusted to us.

In the name of Him who helps us live every day to the fullest. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. GORTON. Mr. President, this morning the leader time has been reserved and the Senate will resume consideration of H.R. 956, the product liability bill.

Under the provisions of the agreement reached last night, there will be at least two rollcall votes beginning at 9:45 this morning on or in relation to amendments to the substitute amendment. Further rollcall votes are expected following the 9:45 a.m. stacked votes, and a vote on final passage can be expected at about 11:30 this morning.

Senators should also be aware that the Senate will begin consideration of the solid waste disposal bill at noon.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDING OFFICER (Mr. CAMPBELL). The Senate will resume consideration of H.R. 956, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gorton amendment No. 596, in the nature of a substitute.

Coverdell-Dole amendment No. 690 (to amendment No. 596), in the nature of a substitute.

Shelby-Heflin modified amendment No. 693 (to amendment No. 690), to provide that a defendant may be liable for certain damages if the alleged harm to a claimant is death and certain damages are provided for under State law.

Harkin amendment No. 749 (to amendment No. 690), to adjust the limitation on punitive damages that may be awarded against certain defendants.

Mr. GORTON. Mr. President, as I have just announced on behalf of the majority leader, we will have two votes in about 10 minutes. Seeing nobody here at the moment to speak, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SHELBY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 693, AS FURTHER MODIFIED, TO AMENDMENT NO. 596

Mr. SHELBY. Mr. President, I ask unanimous consent that I be allowed to amend the Shelby-Heflin amendment, which is slated to be voted on in a few minutes, by inserting at the end of the amendment: "This paragraph shall cease to be effective September 1, 1996."

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 693), as further modified, is as follows:

At the appropriate place insert the following:

SEC. . LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and, as of the effective date of this Act, the applicable State law provides, or has been construed to provide for damages only punitive in nature, a defendant may be liable for any such damages without regard to section 107 but only during such time as the State law so provides. This paragraph shall cease to be effective September 1, 1996.

Mr. GORTON. Mr. President, this is now a reasonable amendment. There was a debate on the Shelby-Heflin amendment yesterday to which I had certain objections, but it is clear that the law of Alabama is unique and peculiar.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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I think it can easily be amended, and the two Senators from Alabama will want to give the Alabama Legislature sufficient time to consider that amendment. I think that is appropriate, and I believe that we can now accept the Shelby-Hefflin amendment by voice vote. Assuming that we do so, Mr. President, there will only be one vote at 9:45.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as further modified.

So the amendment (No. 693), as further modified, was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. SHELBY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEFLIN. Mr. President, I have reservations about this in regard to what has occurred, but I am faced with reality, the reality of votes, and the reality of conference.

Senator SHELBY and I, therefore, are approaching this issue from a pragmatic, not philosophical, viewpoint. I just want to make that clear.

Mr. SHELBY. Mr. President, regarding the amendment we have worked out and that has been voted on, I agree with the senior Senator from Alabama. We can both count. We were counting votes and we were looking reality in the face.

Our State of Alabama is unique among the 50 States in that, as I have said before on the floor, we have had a wrongful death statute that assesses punitive damages only where someone is killed and there is a civil action because of the death. Most States in the Union—I guess all of them except Alabama—have compensatory damages.

If I had my “druthers,” I would leave this like it was or like it is today, but this will give the Alabama Legislature until September 12, 1996, to consider changing it, if this proposed legislation were to become law.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

VOTE ON MOTION TO TABLE AMENDMENT NO. 749

The PRESIDING OFFICER. Under the previous order, the question occurs on amendment No. 749, offered by the Senator from Iowa [Mr. HARKIN].

Mr. GORTON. I move to table the Harkin amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from Connecticut [Mr. LIEBERMAN] is absent because of death in the family.

The PRESIDING OFFICER (Mr. BURNS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 78, nays 20, as follows:

[Rollcall Vote No. 159 Leg.]

YEAS—78

Abraham	Feinstein	Mack
Ashcroft	Ford	McCain
Bennett	Frist	McConnell
Biden	Glenn	Moseley-Braun
Bingaman	Gorton	Moynihan
Bond	Graham	Murkowski
Bradley	Gramm	Murray
Breaux	Grams	Nickles
Brown	Grassley	Nunn
Bryan	Gregg	Packwood
Burns	Hatfield	Pell
Campbell	Hefflin	Pressler
Chafee	Helms	Pryor
Coats	Hutchison	Robb
Cochran	Inhofe	Rockefeller
Cohen	Jeffords	Roth
Coverdell	Johnston	Santorum
Craig	Kassebaum	Simon
D'Amato	Kempthorne	Simpson
DeWine	Kerrey	Smith
Dodd	Kerry	Snowe
Dole	Kohl	Specter
Domenici	Kyl	Stevens
Exon	Lautenberg	Thomas
Faircloth	Lott	Thompson
Feingold	Lugar	Thurmond

NAYS—20

Akaka	Dorgan	Levin
Baucus	Harkin	Mikulski
Boxer	Hatch	Reid
Bumpers	Hollings	Sarbanes
Byrd	Inouye	Shelby
Conrad	Kennedy	Wellstone
Daschle	Leahy	

NOT VOTING—2

Lieberman Warner

So the motion to lay on the table the amendment (No. 749) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. ROCKEFELLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Later the following occurred.)

CHANGE OF VOTE

Mr. PACKWOOD. Mr. President, on rollcall vote 159 I voted “no.” It was my intention to vote “yea.” I ask unanimous consent I be permitted to change my vote. This will in no way change the outcome of the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 629 TO AMENDMENT NO. 690, AS AMENDED

(Purpose: To eliminate caps on punitive damage awards)

Mr. DORGAN. Mr. President, I would like to offer amendment No. 629. The amendment is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 629 to amendment No. 690, as amended:

The amendment is as follows:

Insert at the appropriate place: “Notwithstanding any other provision of this Act, nothing in this Act shall impose limitations on punitive damage awards.”

Mr. DORGAN. Mr. President, the amendment which I have offered is not identical but nearly identical to the amendment I offered prior to cloture. The amendment deals with the punitive damage cap. The amendment I offered previously I offered to the Dole substitute. I now offer this amendment to the underlying bill.

Very simply, my amendment would remove the cap on punitive damages that exists in the bill. The amendment that I offered previously was defeated by a vote of 51 to 49. I would like for the Senate to express itself on that issue in light of the activities on this legislation since the Senate voted on it. While I think there is merit in a product liability reform bill and while I think there is merit on both sides of this issue, I believe the legislation should be like the legislation on product liability we considered last year. That legislation came to the floor of the Senate and was voted on with respect to the last cloture vote without any cap on punitive damages.

Last year, the bill that originated in the Commerce Committee and brought to the floor, did not include a cap on punitive damages. This year, the legislation, as it emerged in the Commerce Committee by the same authors, included a cap on punitive damages. I believe they were right last year and wrong this year on that particular section of the bill.

I believe some reform necessary in this area, but I believe their best impulses and best instincts last year served them better than this year when they decided to impose an arbitrary cap on punitive damages.

After all, the legislation requires you to provide clear and convincing evidence as a burden of proof that the harm caused was carried out with a—let me quote this—“conscious and flagrant indifference to the safety of others.” If a plaintiff has gone through trial and provided clear and convincing evidence that harm was caused or carried out with a conscious and flagrant indifference to the safety of others, then I do not understand why someone would suggest we ought to have a cap on punitive damages.